

August 9, 1978

**78-44 MEMORANDUM OPINION FOR THE GENERAL
COUNSEL, UNITED STATES WATER
RESOURCES COUNCIL**

**Status of the Pacific Northwest River Basin
Commission Under the Federal Unemployment Tax
Act**

This responds to your request for our opinion concerning the status of the Pacific Northwest River Basin Commission (PNWRBC) under the Federal Unemployment Tax Act (FUTA), 26 U.S.C. § 3301 *et seq.* We understand the situation to be as follows: Pub. L. No. 94-566, 26 U.S.C. § 3309, requires that States provide unemployment compensation for State and local government employees in order to qualify for Federal benefits under FUTA. It also authorizes them to tax local governmental units for this purpose. The State of Washington has passed conforming legislation and contends that the PNWRBC is a taxable local governmental unit under State law. The Water Resources Council, on the contrary, contends that the PNWRBC is a "wholly or partially owned" Federal instrumentality exempt from State unemployment taxes under 26 U.S.C. § 3306(c)(6)(A).

Whether the PNWRBC is exempted from State taxation under that provision depends on whether its employees are eligible for unemployment compensation under the Unemployment Compensation for Federal Employees Program (UCFE), 5 U.S.C. §§ 8501 *et seq.*¹ Pub. L. No. 94-566 was intended to extend unemployment compensation to State and local government employees.² Its proponents understood that employees of the United States and wholly or partially owned Federal instrumentalities were already covered by UCFE; the

¹UCFE provides for payment of unemployment compensation, at Federal expense, to "federal employees" as if their "federal service" has been employment covered by the unemployment compensation law of the State of an employee's last duty station. See 5 U.S.C. §§ 8502-8504. A "federal employee" includes, with exceptions not relevant here, a person "in the employ of the United States or an instrumentality which is wholly or partially owned by the United States." 5 U.S.C. § 8501(1), (3). The language is identical to that in 26 U.S.C. § 3306(c)(6)(A).

²See S. Rept. 94-1265, 94th Cong., 2d sess., at 7-8; H. Conf. Rept. 94-1745, 94th Cong., 2d sess., at 11.

bill was meant to provide equivalent treatment for State and local employees.³ Therefore, if PNWRBC employees are eligible for Federal benefits under UCFE, the State has no obligation under 26 U.S.C. § 3309 to provide unemployment compensation for them and has no collateral authority to collect an unemployment tax from the Commission.

The UCFE program is administered by the Department of Labor (Labor). We requested Labor's opinion on whether employees of the PNWRBC are eligible for UCFE benefits. Labor has informed us that the PNWRBC "is covered by the UCFE program as a partially-owned federal instrumentality." Having reviewed Labor's ruling, we concur in its view of the status of the PNWRBC. Accordingly, it is our opinion that the Commission is exempted from the State of Washington's unemployment tax.

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³See 122 Cong. Rec. H. 7411-12 (July 20, 1976).